SUPREME COURT OF OHIO

1997 TERM

Rak-Ree Enterprises, Inc.,
Appellee,

Case No. 97-1040

V.

ENTRY

John Caldwell Timmons,
Appellant.

Upon consideration of the Jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:
Docket Fee, $40.00, paid by John Caldwell Timmons.

(Pickaway County Court of Appeals; No. 96CA46)

/S/ Thomas J. Moyer
Thomas J. Moyer
Chief Justice

Filed September 3, 1997

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

Rak-Ree Enterprises, Inc.

Plaintiff-Appellee,
No. 96 CA 46
V. ENTRY

John Caldwell Timmons,

Defendant-Appellant.

The Notice of Appeal in this case was filed on December 27,1996. Appellant, John Timmons, states that he is appealing the trial court's order of confirmation issued on June 26, 1995. On January 13, 1997, this court put on a fifteen day entry ordering Timmons to address whether the order appealed from is a final appealable order. All parties responded by filing memoranda.

An order confirming a sale is not the order from which a party must appeal. Rather, the actual order of sale is the final appealable order. Third Nat. Bank of Circlevile V. Speakman (1985), 18 Ohio St.3d 119 and Oberlin Savings Bank Co. V. Fairchild (1963), 175 Ohio St. 311. Timmons did appeal the order of sale in 1995, case No 95 CA 5, but later dismissed the appeal when his land was sold.

This is the fifth appeal filed by appellant, three of which, 94CA8, 94CA10 and 94CA14, were decided by this

court in Rak-Ree V. Timmons (1995), 101 Ohio App.3d 12 and the fourth, which was an appeal from the order of sale, 95 CA 5, was voluntarily dismissed by Timmons.

Timmons also filed a Motion for Instructions asking this court to order the Pickaway County Clerk of Courts to give him a time-stamped copy of the docket. We note that the docket is not a filing but rather a list of The filings made in a case. Only documents which are filed in a case are filed-stamped. Timmons' Motion for Instructions is DENIED.

Upon consideration this court finds that the order appealed from is riot a final appealable order pursuant to Third Nat. Bank of Cirdeville and Oberlin Savings Bank, supra. As such, this court has no jurisdiction to consider appellant's appeal.

Rak-Ree requested attorney fees and costs pursuant App.R. 23 asserting that Timmons' appeal is frivolous.

In Parks V. Baltimore & Ohio Railroad (1991), the Eighth District Court of Appeals stated:

> "'A frivolous appeal under App.R. 23 is essentially one which presents no reasonable question for review." Talbott v. Fountas (1984), 16 Ohio App.3d 226 * * *. There is no basis for finding that no reasonable [question]was presented for review when an appeal is dismissed without any consideration of the merits. Id.

In the instant case, we did reach the merits because we lack jurisdiction."

Here, this court is dismissing this matter for lack of jurisdiction and have not reached the merits of this case. Upon consideration, this court, adopting the rationale of the Eighth District in Parks, supra, finds that Rak-Ree's Motion is not well taken and it is therefore, DENIED.
APPEAL DISMISSED. Costs to appellant.
Abele, J. and Stephenson, J.: Concur

/s/ Roger K. Kline
Roger~Kline, Administrative Judge

Filed April 7, 1997

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

RAK REE ENTERPRISES, Inc.

v. Case No. 86-CI-337
ORDER OF CONFIRMATION

JOHN CALDWELL TIMMONS

This matter comes on for hearing upon the motion of Cross-C1aimant, Farm Credit Services of Mid-America, ACA, for an Order confirming the sheriff's sale held in this matter on May 9, 1995, said sale having been ordered upon remand from the Court of Appeals for the Fourth District

after that Court reversed this Court's previous Order of Confirmation and Distribution entered May 19, 1994.

It is found that the State of Ohio, Department of Natural Resources, as successor in interest to the purchaser of the property at the original sheriff's sale, Wildlife Conservation Fund of America, Inc., Trustee, also purchased the property for the sum of One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00) at the May 9, 1995 sheriff's sale.

It is further found that the State of Ohio, Department of Natural Resources, as said successor to the original purchaser and pursuant to R. C. 2329.46, has a lien upon the property to the extent of the money paid and applied to the debtor, Defendant John Caldwell Timmons, at the original sale in the amount of Two Hundred Five Thousand and 00/100 Dollars ($205,000.00) and that the State of Ohio, Department of Natural Resources is subrogated to the rights of the creditors against the debtor, Defendant John Caldwell Timmons, to the extent of such money paid and applied to said debtor's benefit.

It is further found that the Sheriff of Pickaway County, Ohio has produced his return of the sale and that the sale is in all respects in conformity with law and the orders of this Court.

It is therefore ORDERED that said proceedings and the sale be and they are hereby approved and confirmed.

It is further ORDERED and DECREED that the Sheriff convey to the purchaser, State of Ohio, Department of Natural Resources, a deed for the real estate as provided by law.

It is further ORDERED and DECREED that said purchaser is hereby subrogated to all rights of the parties in this action to the extent necessary for the protection of its

title; and that a Writ of Possession is awarded to put the State of Ohio, Department of Natural Resources in possession of the real estate.

It is further ORDERED and DECREED that, pursuant to R. C. 2329.46, the State of Ohio, Department of Natural Resources is hereby subrogated to the rights of Plaintiff RAK-REE Enterprises, Inc. and Cross-claimant Farm Credit Services of Mid-America, ACA in the amount of thirty-Thousand and 00/100 Dollars ($30,000.00) which represents the difference between the purchase price paid at the original sale and applied to the debtor's benefit, Two Hundred Five Thousand and 00/100 Dollars ($205,000.00), and the purchase price paid at the May 9, 1995 sheriff's sale, One Hundred and Seventy-Five Thousand and 00/100 Dollars ($175,000.00).

It is further ORDERED that the Clerk of this Court, to the extent not previously done by any prior order of this court, cause the release and satisfaction of the following encumbrances insofar as they apply to the real estate which is the subject matter of this action without, however, affecting said encumbrances as to other real estate to which they may apply:

1. Mortgage from John Caldwell Timmons to RAK-REE Enterprises, Inc., dated May 18, 1979 and of record in Mortgage Volume 253, Page 165.

2. Mortgage from John Caldwell Timmons to Columbus production Credit Association, dated May 18, 1979 and of record in Mortgage Volume 253, Page 169.

3. Mortgage from John C. Tim mons to Columbus Production Credit Association, dated April 30, 1982 and of record in Mortgage Volume 271, Page 618.

4. Certificate of premium due Ohio Bureau of Workers Compensation, dated June 27, 1983 and of record at Mortgage Volume 278, Page 628.

5. Certificate of Judgment in favor of Ohio Bureau of Workers Compensation which is of record at Judgment Docket 4, Page 314.

It is further ORDERED that the Certificates of Judgment of the Plaintiff, RAK-REE Enterprises, Inc. and the Cross-claimant, Farm Credit Services of Mid-America, ACA, shall not be liens upon the real estate sold.

It is further ORDERED that the following Certificates of Judgment were filed after Defendant John Caldwell Timmons was served with a Summons and copy of the Complaint in this matter and therefore said Certificates of Judgment are barred from being liens upon the subject premises by the doctrine of lis pendens:

Certificate of Judgment in favor of Internal Revenue Service filed February 14, 1994 at 2:28 p.m. and of record at Judgment Docket 7, Page 628.

Certificate of Judgment in favor of Internal Revenue Service filed February 14, 1994 at 2:29 p.m. and of record at Judgment Docket 7, Page 629.

The successful bid of the purchaser, State of Ohio, Department of Natural Resources, being less than the purchase price paid at the original sheriff's sale, there are no further sale proceeds to distribute.

/s/ P.Randall Knece
JUDGE P. RANDALL KNECE

Filed June 26, 1995

IN THE COURT OF COMMON
PLEAS,PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.
Plaintiff,

Case No. 86-CI-337
JUDGMENT ENTRY

v.

JOHN CALDWELL TIMMONS, et al.
Defendant.

This cause came on for hearing on November 23, 1992 upon the Motion for Default Judgment of Production Credit Association of the Fourth District, now Farm Credit Services of Mid-America, ACA, on its Cross-claim against Defendant, John Caldwell Timmons; notice of said hearing having been served upon all parties and the Defendant, John CaLdwell Timmons, having failed to plead in response to movant's Cross-Claim, said Defendant not being a minor, incompetent or in the military, the Court therefore finds said mofion well taken.

It is therefore ORDERED, ADJUDGED and DECREED that the Defendant, Farm Credit Services of Mid-America, ACA, is granted judgment against the Defendant, John Caldwell Timmons, in the amount of One Hundred Thirty Thousand Two Hundred Seventy-One and 85/100 Dollars ($130,271.85) plus interest after the 6th day of April, 1993 and costs herein expended.

It is further ORDERED that Farm Credit Services of Mid-America, ACA shall have the right to foreclose the lien

of its mortgage upon the real estate which is the subject matter of this action.

This is a final appealable order and the Clerk shall serve notice to the patties as provided for by Civil Rule 58.

/s/ William Ammer
Dated: April 7, 1993 JUDGE

IN THE COURT OF COMMON PLEAS,
PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.
Plaintiff,

Case No. 86-CI-337

V.

JUDGMENT DECREE IN FORECLOSURE

JOHN CALDWELL TIMMONS, et al.
Defendant.

Cross-claimant, Farm Credit Services of Mid-America, ACA, was granted judgment in this matter on April 7, 1993 against Defendant, John Caidwell Timmons, in the amount of One Hundred Thirty Thousand Two Hundred Seventy-One and 85/100 Dollars ($130,271.85) plus interest accruing after April 6, 1993 and that the lien of its

mortgage upon the real estate Which is the subject matter of this action be forciosed.

Upon the evidence, pleadings and the record in this matter, the Court further finds as follows:

The Plaintiff, Rak-Ree Enterprises, Inc. filed its Complaint on July 21, 1986. Defendants, John CaLdwell Timmons, Ohio Bureau of Employment Services and Bank One, Columbus, NA, have entered appearances.

Defendant, Ohio Bureau of Employement Services, has disclaimed any interest in the real property which is the subject matter of this action. Defendant, Bank One, Columbus, NA, claimed a security interest in growing crops but said interest appears to have been extinguished.

The interest of Defendant, Treasurer of Pickaway County, Ohio is specified by Ohio Revised Code *_5719.01.

There is now due and owing to Plaintiff on the mortgage promissory note executed by Defendant, John Caldwell Timmons, the sum of One Hundred Thirty Thousand Two Hundred Seventy-One and 85/100 Dollars ($130,271.85), plus interest at an adjustable rate of accruing after April 6, 1993.

That in order to secure the obligations of said promissory note, Defendant, John Caldwell Timmons, on April 30, 1982, executed and delivered to Cross-claimant's predecessor in interest a mortgage conveying conditionally to Cross-claimant the real estate set forth therein located in Harrison Township, Pickaway County, Ohio. This mortgage was filed for record with the Recorder of Pickaway County, Ohio and is of record in Mortgage Volume 271, Page 618 of

said county records and is a valid and subsisting lien upon the real estate described therein.

Since the filing of its Cross-claim, Farm Credit Services has released 1.3774 acres from the operation and effect of its mortgage. After the filing of its Complaint, the Plaintiff, Rak-Ree Enterprises, Inc., acquired title to a 24.3064 acre parcel and a 9.70 acre parcel which were originally subject to its mortgage and which remain subject to the mortgage of Farm Credit Services of Mid-America, ACA. Rak-Ree Enterprises, Inc. and Farm Credit Services of Mid-America, ACA are currently negotiating an agreement regarding the real estate now owned by Rak-Ree Enterprises, Inc. and said real estate will not be sold at this time.

The property subject to the mortgage of Cross-claimant, Farm Credit Services of Mid-America, ACA, which is to be sold by the Sheriff is described as follows:

Parcel One: Being 198.4306 acres located in Harrison Township, Pickaway County, Ohio and more fully described on the attached Exhibit '1A'1. (Originally 233.884 acres excepting 1.3774 acres; excepting 24.3060 acres; and excepting 9.770 acres).

The mortgage lien of Farm Credit Services of Mid-America, ACA on Parcel One is subject to the prior mortgage lien of the Plaintiff, Rak-Ree Enterprises, Inc., and the lien of the Treasurer of Pickaway County, Ohio for unpaid real estate taxes.

The mortgage of Farm Credit Services of Mid-America, ACA contains the condition that if the Mortgagor, John Caldwell Timmons, defaults in the payment of said indebtedness, then the Cross-claimant shall have the right to foreclose; there has been a default in payment on said

mortgage promissory note in accordance with the terms and tenure thereof, and accordingly the condition of defeasance in said mortgage was broken and said mortgage thereby became absolute and Cross-claimant is entitled to have said mortgage foreclosed, the equity of redemption of the Defendant, John Caldwell Timmons, in Parcel One forever cut off, barred and foreclosed, said parcel sold and the proceeds applied in payment of the aforementioned amount found to be due and owing to Cross-claimant, according to its priority.

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED, that the mortgage of Cross-claimant, Farm Credit Services of Mid-America, ACA, is a valid and subsisting lien upon the premises described in said mortgage; that Cross-claimant's mortgage and the lien thereof be foreclosed; that unless Defendant, John Caidwell Timmons, pays or causes to be paid the costs of this action and the amounts aforesaid found to be due and owing to Cross-claimant within three (3) days after filing this decree, the equity of redemption of said Defendant in the real estate to which he holds tide shall be cut off, barred and foreclosed, and said real estate sold free and clear of any lien, claim or interest of Cross-claimant, Plaintiff or the Defendants of whatever nature or kind, and for an Order of Sale to be issued to the Sheriff of Pickaway

County, Ohio, directing him to appraise, advertise and sell said real estate according to law and the Orders of this Court, and report these proceedings to this Court and await further Orders of this Court.

Date: June 18, 1993 /s/ William Ammer
JUDGE

IN THE COURT OF COMMON PLEAS,
PICKAWAY COUNTY, OHIO

No. 86-CI-337
AGREED ENTRY

RAK-REE ENTERPRISES, INC.
Plaintiff,

V.

JOHN CALDWELL TIMMONS, et al.
Defendant.

This Agreed Entry is made by and between the Plaintiff, RAK-REE Enterprises, Inc.,and Cross-Claimant, Farm Credit Services of Mid-America, ACA. The purpose of this Agreed Entry is to establish priority for the distribution of proceeds from the Sheriff Sale of the real estate which is the subject matter of this action and to provide for the release from Cross-Claimant's mortgage of certain property now owned by the Plaintiff.

At the time this action was initiated, the mortgages of the Plaintiff and the Cross-Claimant covered 233.884 acres. Defendant, John C. Timmons, subsequently conveyed tracts of 24.3060 acres and 9.770 acres out of the 233.884 acre parcel to the Plaintiff. These conveyances were made while Defendant Timmons was under the jurisdiction of the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division in Case No.2-86-05021, In re: John C. Timmons. Defendant Timmons neither notified Cross-

Claimant of his conveyances nor disclosed the existance of Cross-Claimant's mortgage to the Plaintiff.

Plaintiff now wishes to obtain the release of the 24.3060 acre and 9.770 acre tracts from the operation and effect of Cross-Claimant's mortgage. Cross-Claimant desires to obtain consideration for the release of said tracts which are a portion of the collateral securing payment of the amount due it.

Cross-Claimant does hereby agree to release the 24.3060 acre and 9.770 acre tracts from its mortgage. In consideration of Cross-Claimant's agreement to release, the Plaintiff hereby agrees to partially subordinate its first mortgage claim on the 198.4306 acre parcel scheduled for Sheriff Sale on Tuesday, March 29, 1994, said subordination to be in favor of Cross-Claimant's second mortgage claim. The subordination shall be implemented by sale proceeds being distributed and disbursed as follows:

a. Sale proceeds shall first be disbursed in payment of court costs, real estate taxes, conveyance fee, poundage and any other administration costs having priority over mortgage indebtedness.

b. Sale proceeds next shall be disbursed to Plaintiff, RAK-REE Enterprises, Inc., in the amount of Seventy-Five Thousand Dollars ($75,000.00).

c. Sale proceeds shall thereafter be disbursed to Cross-Claimant, Farm Credit Services of Mid-America, ACA, in the amount of One Hundred Forty-One thousand Six Hundred Eighty-Seven and 07/100 Dollars ($141,687.07) being the balance due Cross-Claimant as of the date of sale, March 29, 1994.

d. Sale proceeds after payment to Cross-Claimant shall be disbursed to the Plaintiff to the extent required to pay Plaintiff in full if adequate sale proceeds exist.

March 29, 1994 /s/ William Ammer
JUDGE WILLIAM

UNITED STATES BANKRUPTCY COURT
SOUTRERN DISTRICT OF OHIO
EASTERN DIVISION

In re
John Caidwell Timmons, Caldwell)
Debtor.

Case No. 93-54857
Chapter 12 (Judge

SSAN 285-44-3009

ORDER ON CIAIM OF RAK-REE ENTERPRISES. INC.

A hearing was held December 13, 1993, to determine the amount owed by the above-referenced Debtor to the Creditor, RAK--REE Enterprises, Inc. After testimony and oral arguments, the Court finds that the Debtor is indebted to this Creditor in the amount of $120,000.00.

IT IS SO ORDERED.

Dated: JAN 7 1994 /s/ Charles M. Caldwell

Charles M. Caldwell
United States Bankruptcy
Judge

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

CASE NO. 86~CI-337

RAK-REE EN'IERPRISES, INC.
PLAINTIFF

-V-

JOHN CALDWELL TIMMONS
DEFENDANT

PIATINTIFF RAK-REE ENTERPRISES. INC.'S
MOTION FOR DEFICIENCY .JUDGMENT

Now comes the Creditor, Rak-Ree Enterprises, Inc. (hereinafter Rak-Ree) and moves this Court for a Deficiency Judgment in the amount of $45,000.00 against Defendant

John C. Timmons. Plaintiff is entitled to a Deficiency Judgment in this amount since the value of Plaintiff's secured claim is $120,000.00 (See Exhibit A Order of U.S. Bankruptcy Court in Case No.93-54857). Rak-Ree stands to receive only $75,000.00 from the foreclosure sale of Defendant's farm real estate. (See Agreed Foreclosure Entry filed M&ch 29, 1994 Exhibit B).

WHEREFORE, for the foregoing reasons, Plaintiff Rak-Ree moves this Court for a Deficiency Judgment against Defendant John Caldwell Timmons in the amount of $45,000.00.

Respectfully submitted,

WRIGHT & LOGAN Co., LPA
4266 Tuller Road, Suite 101
Dublin, Ohio 43017
(614) 791-9112

/s/ J. Anthony Logan
Attorney for Rak-R e Enterprises, Inc.

IN ThE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

CASE NO. 86-CI-337

RAK-REE ENTERPRISES, INC.
PLAINTIFF

-V-

JOHN CALDWELL TIMMONS, et al.,
DEFENDANTS

This matter is before the Court on Plaintiff Rak-Ree Enterprises, Inc.'s Motion for Deficiency Judgment. It appears to the Court that the claim of Rak-Ree Enterprises has been established by the United States Bankruptcy at $120,000.00 by Order dated January 7, 1994. It further appears that proceeds allocated to Plaintiff Rak-Ree Enterprises from the March 29, 1994 Sheriff's Sale will equal $75,000.00.

Therefore it is ORDERED, adjudged and decreed that Plaintiffs Rak-Ree Enterprises, Inc. are hereby granted a Deficiency Judgment against John Caidwell Timmons in the amount of $45,000.00. Plaintiffs may proceed forthwith to collect upon said judgment as authorized by law.

Dated: April 14, 1994 /s/ William Ammer
Judge William Ammer

IN THE COURT OF COMMON PLEAS,
PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.
Plainfiff,

Case No. 86-CI-337

V.

JOHN CALDWELL TIMMONS, et al.
Defendants.

ORDER OF CONFIRMATION
AND DISTRIBUTION

Upon motion of the Cross-Claimant, Farm Credit Services of Mid-America, ACA, herein, and upon its producing the return of the Sheriff of Pickaway County, Ohio, of the sale made pursuant to former Order of this Court, and on careful examination of the proceedings of the Sheriff, being satisfied that the same have been had in all respects in conformity to law and the Orders of the Court, it is Ordered that said proceedings and the sale be and they are hereby approved and confirmed.

It is further Ordered and Decreed that the Sheriff convey to the purchaser, Wildlife Conservation Fund of America, Inc., Trustee, assignee of Ducks Unlimited, Inc.,

the successful bidder at the sheriff sale, and that said purchaser is hereby subrogated to all the rights of the parties in this suit in said real estate for the protection of their title; and a Writ of Possession against the parties in possession is awarded to put said purchaser in possession of the real estate.

It is further Ordered that the Clerk of this Court cause release and safisfacfion of the following mortgages on the records thereof in the Office of the Recorder of Pickaway County, Ohio:

Mortgage from John Caldwell Timmons to RAK-REE Enterprises, Inc., dated May 18, 1979 and of record in Mortgage Volume 253, Page 165.

Mortgage from John Caldwell Timmons to Columbus Production Credit Asssociation, dated May 18, 1979 and of record in Mortgage Volume 253, Page 169.

Mortgage from John C. Timmons to Columbus Production Credit Association, dated April 30, 1982 and of record in Mortgage Volume 271, Page 618.

It is further Ordered that the Clerk of this court cause to be released the following lien insofar as it applies to the real estate which is the subect matter of this action:

Certificate of premium due Ohio Bureau of Workers Compensation, dated June 27, 1983 and of record at Mortgage Volume 278, Page 628.

It is further Ordered that the Clerk also cause to be released the following Certificate of Judgment insofar as it

applies to the real estate which is the subject matter of this action:

Certificate of Judgment in favor of Ohio Bureau of Workers Compensation which is of record at Judgment Docket 4, Page 314.

It is further Ordered that the following Certificates of Judgment were filed after the Defendant, John Caldwell Timmons, was served with a Summons and copy of the Complaint in this matter and therefore said Certificates of Judgment are barred from being liens upon the subject premises by the doctrine of lis pendens:

Certificate of Judgment in favor of Internal Revenue Service filed February 14, 1994 at 2:28 p.m. and of record at Judgment Docket 7, Page 628.

Certificate of Judgment in favor of Internal Revenue Service filed February 14, 1994 at 2:29 p.m. and of record at Judgment Docket 7, Page 629.

And the Court, coming now to distribute the proceeds of said sale in the amount of Two Hundred Five Thousand and 00/100 Dollars ($205,000.00), it is Ordered that the Sheriff of Pickaway County, Ohio, out of the money in his hands pay the following:

To the Treasurer of Pickaway County, Ohio as and for taxes currenfly due and payable on Parcel No. D1200030031200 the sum of Four Hundred Fifty and 63/100 Dollars ($450.63).

To the Clerk of Courts of Pickaway County, Ohio, the costs of this action in the amount of Six Thousand Eight Hundred Seventy-Two and 74/100 Dollars ($6,872.74).

To the Plainfiff, RAK-REE Enterprises, Inc., the sum of Seventy-Five Thousand Dollars ($75,000.00) pursuant to the Agreed Entry between RAK-REE Enterprises, Inc. and Farm Credit Services of Mid-America, ACA entered in this matter on March 29,1994, as satisfaction of its mortgage lien and in partial payment of the amount due it.

To Cross-Claimant, Farm Credit Services of Mid-America, ACA the sum of One Hundred Twenty-Two Thousand Six Hundred Seventy-Six and 63/100 Dollars ($122,676.63).

It appearing to the Court that the distribution to Cross-Claimant, Farm Credit Services of Mid-America, ACA, will be inadequate to satisfy the judgment in its favor, a deficiency judgment will be, and hereby is, awarded to Farm Credit Services of Mid-America, ACA against Defendant, John Caldwell Timmons, in the amount of Nineteen Thousand Ten and 44/100 Dollars ($19,010.44) plus interest accruing from March 30, 1994. A deficiency judgment in the amount of $45,000.00 has been granted to Plainfiff, RAK-REE Enterprises, Inc., by Order of April 14, 1994.

/s/ William Ammer
JUDGE WILLIAM AMMER

Dated: May 12, 1994

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

RAK-REE ENTERPRISES, INC.,
Plaintiff-Appellee,

vs.

JOHN CALDWELL TIMMONS,
Defendant-Appellant.

And

FARM CREDIT SERVICES OF
MID-AMERICA, ACA,
Defendant-Appel lee

CASE NOS. 94-CA-8
94-CA-10
94-CA-14

DECISION
AND
JUDGMENT ENTRY

APPELLANT PRO SE: John Caldwell Timmons

COUNSEL FOR APPELLEE
RAK-REE ENTERPRISES: J. Anthony Logan

COUNSEL FOR APPELLEE
FARM CREDIT SERVICES

OF MID-AMERICA, ACA: John E. Bowers

—— This is a consolidated appeal from three Pickaway County Common Pleas Court judgments in a foreclosure action brought against John Caldwell Timmons, defendant below and appellant herein. In Case No. 94 CA 8, appellant appeals the Pickaway County Clerk of Court's March 29, 1994 order of sale directed to the Pickaway County Sheriff. In Case No. 94 CA 10, appellant appeals the trial court's April 14, 1994 deficiency judgment. In Case No. 94 CA 14, appellant appeals the trial court's May 19, 1994 order of confirmation and distribution.

Appellant assigns the following two errors in Case No. 94 CA 10, his appeal from the deficiency judgment:

FIRST ASSIGNMENT OF ERROR:

"PURSUANT TO RULE 7 OF THE OHIO RULES OF CIVIL PROCEDURE, AN APPLICATION TO THE COURT FOR AN ORDER SHALL BE BY MOTION WHICH,---, SHALL BE MADE IN WRITING."

SECOND ASSIGNMENT OF ERROR:

"THE JUDGMENT WAS MADE FOR THE PLAINTIFF IN VIOLATION OF THE MATERIAL FACTS IN THIS ACTION."

Appellant assigns the following four errors in Case No. 94 CA 14, his appeal from the order of confirmation and distribution:

FIRST ASSIGNMENT OF ERROR:

"THE WRONG DATE WAS ADVERTISED FOR THIS SALE. THE DATE ADVERTISED WAS FOR TUESDAY, MAY 28, 1993 BUT WAS ACTUALLY HELD TUESDAY, MAY 29, 1994."

SECOND ASSIGNMENT OF ERROR:

"A VALID JUDGMENT DID NOT EXIST FOR ONE OF THE CREDITORS AND NO CERTIFICATION WAS MADE THAT THERE WAS NO JUST REASON FOR DELAY PURSUANT TO THE CIVIL RULES OF PROCEDURE, RULE 54(B)."

THIRD ASSIGNMENT OF ERROR:

"THE ORDER OF SALE DID NOT HAVE THE SIGNATURE OF THE COURT."

FOURTH ASSIGNMENT OF ERROR:

THE ORDER OF SALE DID NOT HAVE A PROPER TIME STAMP TO INDICATE THE DATE OF ISSUE FOR THE ORDER."

Appellant did not file a brief in Case No. 94 CA 8, his appeal from the clerk of court's order of sale. We note, however, that appellant's last two assignments of error in Case No. 94 CA 14 relate to the clerk of court's order of sale.

Rak-Ree Enterprises, Inc., plaintiff below and appellee herein (hereinafter Rak-Ree), commenced this foreclosure action more than eight years ago on July 21, 1986. Defendants in the action included appellant and holders of interests in the land. On April 7, 1993, Defendant

Columbus Production Credit Association won a cross-claim against appellant for $130,271.85.

Farm Credit Services of Mid-America, ACA, (hereinafter Farm Credit Services) now holds the interest and position formerly held by Columbus Production Credit Association in this action.

Appellant's bankruptcy actions stayed the proceedings in this action on three occasions. On June 18, 1993, the trial court entered a judgment decree in foreclosure. The decree provided in pertinent part as follows:

> "There is now due and owing to Plaintiff on the mortgage promissory note executed by Defendant, John Caldwell Timmons, the sum of One Hundred Thirty-Thousand Two Hundred Seventy-One and 85/100 Dollars ($130,271.85), plus interest at an adjustable rate of accruing after April 6, 1993.
>
> NOW ThEREFORE, it is ORDERED, ADJUDGED and DECREED, * * * that unless Defendant, John Caldwell Timmons, pays or causes to be paid the costs of this action and the amounts aforesaid found to be due and owing * * *, the equity of redemption of said Defendant in the real estate to which he holds title shall be cut off, barred and foreclosed, and said real estate sold free and clear of any lien, claim or interest of Cross- claimant, Plaintiff or the Defendants of whatever nature or kind, and for an Order of Sale to be issued to the Sheriff of Pickaway County, Ohio, directing him to appraise, advertise and sell said real estate according to law * * * ."

On April 4, 1994, the Pickaway County Clerk of Courts issued an order of sale directing the Pickaway County Sheriff to appraise, advertise, and sell the land in question. The sheriff's return on the order of sale indicated that the appraisers valued the land at $200,000 and the sheriff sold the land for $205,000 on March 29, 1994.

Five days prior to the sheriff's sale, appellant filed a motion requesting the trial court to stay the sale. Appellant noted that advertisements of the sale incorrectly stated that the sale would be held on Tuesday, March 28, 1993. Appellant argued that the incorrect advertisement would "understandably confuse potential buyers and would ultimately affect the price which might be realized from the sale."

One day prior to the sheriff's sale, appellant filed a motion requesting the trial court to stay the sale pending appellant's appeal of his bankruptcy case. Appellant specifically noted that he is appealing the bankruptcy court's award of $120,000 to Rak-Ree. Appellant claimed that in light of his bankruptcy appeal, Rak-Ree's $120,000 claim cannot be considered to be a valid claim.

On April 14, 1994, approximately two weeks after the sheriff's sale, Rak-Ree filed a motion for a $45,000 judgment. In the motion, Rak-Ree noted that the bankruptcy court valued its secured claim at $120,000, but pursuant to a March 29, 1994 agreed entry between Rak-Ree and Farm Credit Services, Rak- Ree will receive only $75,000 from the sheriff's sale. Later that day, the trial court granted Rak-Ree a $45,000 deficiency judgment

On April 18, 1994, appellant filed copies of advertisements for sale of the land in guestion. Appellant noted that the first three advertisements incorrectly indicated that the sale would be held on Tuesday, March 28, 1993. The last advertisement incorrectly indicated that the sale would be held on Tuesday, March 29, 1993. The sale was held on Tuesday, March 29, 1994.

On May 12, 1994 Farm Credit Services filed a motion for an order confirming the March 29, 1994 sheriff's sale and distributing the proceeds of the sale. On May 19, 1994, the trial court held a hearing on the motion. At the hearing, appellant argued that the advertisements listed the incorrect date for the sheriff's Bale. Appellees noted that the property nevertheless sold in excess of its appraised value. Appellees further noted that there was no evidence that anyone who came to the courthouse on Monday, March 28, 1994 and heard the sheriff announce that the sale would be held the next day, did not return the next day to bid on the property. After the hearing, the trial court entered an order of confirmation and distribution.

Appellant filed notices of appeal from the clerk of court's March 29, 1994 order of sale, the trial court's April 14, 1994 deficiency judgment, and the trial court's May 19, 1994 order of confirmation and distribution.

I

A

In his third assignment of error in Case No. 94 CA 14, addressing the March 29, 1994 order of sale, appellant asserts the trial court did not sign the order of sale. Appellant argues that without the trial court's signature, the order of sale is not a valid court order.

We agree that the Pickaway County Clerk of Court's March 29, 1994 order of sale directed to the Pickaway County Shefiff did not include the trial court's signature. The order, however, was not an order of the court and thus did not require the trial court's signature. The clerk of courts issued the order in compliance with the trial court's June 18, 1993 judgment decree of foreclosure. In that decree, the trial court directed "an Order of Sale to be issued to the Sheriff of Pickaway County, Ohio, directing him to appraise, advertise and sell said real estate according to law."

Accordingly, based upon the foregoing reasons, we overrule the third assignment of error in Case No. 94 CA 14 and we dismiss the appeal in Case No. 94 CA 8 from the clerk of court's March 29, 1994 order of sale.

B

In the fourth assignment of error in Case No. 94 CA 14, appellant asserts that the order of sale did not have a proper time stamp to indicate the date of issue.

First, we once again note that the order of sale was not a court order, but rather was an order of the clerk of courts directed to the sheriff in compliance with the trial court's judgment decree of foreclosure. Second, we note appellant cites no authority that would reguire the clerk of courts to place a time stamp on the order of sale at the time the clerk issues the order. The order of sale already includes the date the clerk issued it, the date the sheriff received it, the various dates the sheriff executed the order, and time stamps indicating the receipt date and the return date.

Accordingly, based upon the foregoing reasons, we overrule appellant's fourth assignment of error in Case No. 94 CA 14.

II

A

In his first assignment of error in Case No. 94 CA 14 (the appeal from the order of confirmation and distribution), appellant asserts that the wrong date was advertised for this sale. Appellant contends that although the sheriff advertised the sale for Tuesday, May 28, 1993, the sheriff actually held the sale on Tuesday, May 29, 1994.

We agree with appellant that the trial court abused its discretion by confirming the sale under the circumstances of this case. The advertisements incorrectly listed the date of the sale. R.C. 2329.26 requires the sheriff to give public notice of the time and place of sale:

Lands and tenements taken in execution shall notbe sold until the officer taking them gives public notice of the time and place of sale, for at least thirty days before the day of sale, by advertisement in a newspaper * * * (Emphasis added.)

In Mellon Fin. Serv. v Russell (Mar. 1, 1991), Ashtabula App. No. 90-A-1514, unreported, the court recognized the importance of advertising the time and place of the sale. The court wrote in pertinent part as follows:

"In Transamerica Financial Services V. Fitzgerald (Mar. 1, 1982), Geauga App. No. 987, unreported, this court stated that the primary purpose of publication is to give notice of the proposed sale. Under this

standard, the crucial data which the notice must contain is the time and place of the sale and the identity of the property."

We note that R.C. 2329.27 specifies that all sales made without proper advertisement "shall be set aside."

R. C. 2329.31 provides that trial courts shall confirm a sale if the sale was made in conformity with R.C. 2329.01 through R.C. 2329.61:

Upon the return of any writ of execution for the satisfaction of which lands and tenements have been sold, on careful examination of the Droceedings of the officer making the sale, if the court of common pleas finds that the sale was made. in all respects in conformity with sections R.C. 2329.01 to 2329.61, inclusive, of the Revised Code, it shall direct the clerk of the court of common pleas to make an entry on the journal that the court is satisfied of the legality of such sale, and that the officer make to the purchaser a deed for the lands and tenements."

(Emphasis added.)

The statute requires a careful examination of the proceedings leading to the sale, and requires assurance that the sale was made, in all respects, in conformity with the statutes.

If the trial court abuses its discretion by confirming an improper sale, we must reverse the confirmation. Ohio Savings Bank V. Ambrose (1990), 56 Ohio St.3d 53, 55, 563 N.E.2d 1388, 1389. In Union Bank Co. V. Brumbauah (1982), 69 Ohio St.2d 202, 208, 431 N.E.2d 1020, 1025, the court wrote in pertinent part as follows:

[T]he officer must give public notice of the time and place of sale for at least 30 days before the sale by advertisement in a newspaper published in and of general circulation in the county. R.C. 2329.26. The land cannot be sold for less than two thirds of the appraised value. R.C. 2329.20. There is no statutory dictate that a hearing must be held at this time. If the court, after examining the proceedings taken by the officers, finds the sale was made in conformance with R.C. 2329.01 to 2329.61, inclusive, it shall confirm the sale. R.C. 2329.31. Where the trial court abuses its discretion in confirming the sale. a reviewing court will reverse that decision. * * * ."

Because the sale in the case sub judice did not conform to the applicable statutes in all respects, we must reverse the trial court's decision confirming the sale.

Accordingly, based upon the foregoing reasons, we sustain the first assignment of error in Case No. 94 CA 14.

B

In his second assignment of error in Case No. 94 CA 14, appellant asserts that the trial court failed to include the Civ.R. 54(B) language "no just reason for delay" in the final judgment. Appellant claims the language is necessary because there was no valid judgment for Rak-Ree."

We disagree with appellant. Neither the trial court's June 28, 1993, judgment decree in foreclosure nor the trial court's May 19, 1994 order of confirmation and distribution neglected to adjudicate Rak-Ree's rights in the case sub judice.

Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error in Case No. 94 CA 14.

III

A

In his first assignment of error in Case No. 94 CA 10 (the appeal from the deficiency judgment), appellant asserts that the trial court erred by awarding the deficiency judgment without notice and a hearing. Rak-Ree agrees ~hat the trial court issued the deficiency judgment on the same day Rak-Ree filed the motion requesting the judgment. Rak-Ree, however, argues that the deficiency judgment did not become a final appealable order until the trial court filed the order of confirmation and distribution on May 19, 1994. Rak-Ree further argues that appellant failed to oppose the motion prior to May 19, 1994.

We agree with Rak-Ree that the deficiency judgment did not become a final appealable order until the trial court filed the order of confirmation and distribution on May 19, 1994. We also agree with Rak-Ree that appellant failed to oppose the motion prior to that date. We note the record contains no evidence that the trial court erred by granting the deficiency judgment in favor of Rak-Ree.

Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error in Case No. 94 CA 10.

B

In his second assignment of error in Case No. 94 CA 10, appellant asserts the trial court entered the deficiency judgment "in violation of the material facts in this action." In particular, appellant asserts the trial court should not have relied upon the bankruptcy court's judgment that Rak-Ree's claim is worth $120,000. Appellant notes that since the bankruptcy court's judgment, over $102,000 "has been paid" to Rak-Ree.

We have reviewed the record and find no evidence that over $102,000 "has been paid" to Rak-Ree since the bankruptcy court's judgment setting Rak-Ree's claim at $120,000. As we discussed above, appellant failed to challenge the deficiency judgment prior to the date of the final appealable order in this case.

The record contains no evidence to support the argument appellant raises in this assignment of error.

Accordingly, based upon the foregoing reasons, we overrule the second assignment of error in Case No. 94 CA 10.

In light of our disposition of appellant's first assignment of error in Case No. 94 CA 14, we reverse the May 19, 1994 order of confirmation and distribution and we remand this cause for further proceedings.2 We note that depending upon the results of the public sale on remand, the trial court may need to amend the April 14, 1994 deficiency judgment.

1We note that although appellant argued during the proceedings below that he appealed the bankruptcy court's determination that the Rak-Ree claim was worth $120,000, appellant makes no similar argument on appeal. For that

reason, we may assume that appellant did not succeed in his bankruptcy appeal.

2.Upon remand the parties should be aware of R.C. 2329.46 which provides in pertinent part as follows:

> Upon the sale of property on execution, if the title of the purchaser is invalid by reason of a defect in the proceedings, he may be subrogated to the right of the creditor against the debtor to the extent of the money paid and applied to the debtor's benefit, and, to the same extent, may have a lien on the property sold, as against all persons, except bona fide purchasers without notice. This section does not require the creditor to refund the purchase money by reason of the invalidity of such sales.

JUDGMENT IN CASE NO. 94 CA 14 IS REVERSED. THE JUDGMENT IN CASE NO. 94 CA 10 IS AFFIRMED. AND THE APPEAL IN CASE NO. 94 CA 8 IS DISMISSED.

JUDGMENT ENTRY

It is ordered that the judgment in Case No. 94 CA 14 is reversed, the judgment in Case No. 94 CA 10 is affirmed, and the appeal in Case No. 94 CA 8 is dismissed. It is further ordered that appellant recover of appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal. It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Exceptions.

Stephenson, J., Grey, J. & Abele, J.: Concur in Judgment & Opinion

For the Court

By: /s/ Earl E. Stephenson
Earl E. Stephenson, Judge

By: /s/ Lawrence Grey
Lawrence Grey, Judge

By: /s/ Peter B. Abele
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 12, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

IN THE COURT OF COMMON PLEAS,
PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.

Plaintiff, Case No. 86-CI-337

V. PRAECIPE FOR ORDER OF SALE ON REMAND

JOHN CALDWELL TIMMONS, et al.
Defendant.

The Order of Confirmation and Distribution entered in this matter on May 19, 1994 having been reversed and this cause having been remanded for further proceedings, please issue an Order of Sale to the Sheriff of Pickaway County, Ohio instructing him to appraise and sell the parcel of 198.4306 acres located in Harrison Township, Pickaway County, Ohio and being that property more fully described on Exhibit NAN attached hereto. (Originally being a parcel of 233.884 acres excepting 1.3774 acres; excepting 24.3060 acres and further excepting 9.770 acres).

Further instruct the Sheriff to publish notice of said sale once each week for five consecutive weeks, with the first notice being published at thirty-one days prior to the date of sale.

The Sheriff of Pickaway County, Ohio is also to be directed to notify the office of John E. Bowers, Attorney for Plaintiff, with the date and time of sale immediately upon scheduling and to provide Plaintiff's attorney with a copy of the advertising immediately upon publication.

PARCEL # D-12-OOO-300-312-OO

Dated: February 13, 1995 /s/ John E. Bowers

John E. Bowers

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.,
Plaintiff

vs. Case No. 86-CI 337

JOHN CALDWELL TIMMONS, et al
Defendants.

ORDER AND JOURNAL ENTRY ON
DEFENDANT'S MOTION TO STRIKE WRIT:
MOTION FOR STAY OF EXECUTION AND
MOTION FOR RELIEF FROM JUDGMENT

This matter came on for hearing on Defendant John Caldwell Timmons ("Defendant") Motion to Strike Writ for Lack of Jurisdiction, Motion for Stay of Execution and Motion for Relief from Judgment filed in the within matter. The parties appeared at hearing on October 3, 1997. Plaintiff Rak-Ree Enterprises, Inc.("Plaintiff') was represented by counsel. Defendant appeared pro Se.

Upon review of the Memoranda filed by the parties and upon consideration of the oral arguments at hearing, the

Court hereby finds that Defendant has failed to demonstrate a legal or factual basis for the granting of said Motions.

WHEREFORE, it is hereby ORDERED that Defendant's Motion to Strike Writ for Lack of Jurisdiction, Defendant's Motion for Stay of Execution and Defendant's Motion for Relief from Judgment under Rule 60(B) are hereby DENIED. Plaintiff may proceed forthwith to execute on its Judgment of Record in the within case.

SO ORDERED.

Dated: October 14, 1997 /s/ P. Randall Knece
Judge P.Randall Knece

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

RAK-REE ENTERPRISES, INC.,
Plaintiff-Appellee

vs.

No. 97-CA-24

JOHN CALDWELL TIMMONS, et al
Defendant-Appellant

Appellant, John Timmons, filed a Motion for Stay asking this court to stay the sale of some of his farm equipment being sold by Rak-Ree to satisfy a judgment taken by them. Rak-Ree filed a Memorandum in Opposition to the Stay.

Upon consideration, appellant's Motion for Stay is well taken. It is, therefore, ORDERED that the stay shall be effective immediately upon the filing with the Pickaway County Clerk of Courts a supersedeas bond or cash in the amount of $100,000.

Abele, J: Concurs
Kline, J.: Dissents

/s/ Earl E. Stephenson
Earl E. Stephenson,
Presiding Judge

November 19, 1997

LIST OF ALL PARTIES TO THE PROCEEDING BELOW

The parties to this appeal and the names and addresses of their attorneys are as follows:

Parties in Interest	REPRESENTATION
John Caldwell Timmons Defendant –Petitioner Box 10375, US Rt 23 Lockbourne, Ohio 43137 (614) 983-3654	John Caldwell Timmons 10375 U.S. Rt. 23 Lockbourne, Ohio 43137 (614) 983-3654
RAK-REE Enterprises Plaintiff-Respondent c/o Robert Johnson 5746 Jackson Pike Grove City, Ohio 43123 (614) 871-0092	J. Anthony Logan RAK REE Counsel Wright & Logan Co., LPA 4266 Tuller Road Dublin, Ohio 43017 (614) 791-9112
Farm Credit Services Cross-claimant-Respondent c/o John Carpenter P.O. Box 277 Washington C.H., Ohio 43160 (614) 335-2750	John E. Bowers Counsel for Farm Credit Services 233 North Court Street Circleville, Ohio 43113 (614) 477-1361
Elizabeth Timmons Estate Respondent C/o Ann Root 4200 Lyon Drive Columbus, Ohio 43220	Benjamin F. Suffron Martin, Pergram, and Browning Co., LPA 69 East Wilson Bridge Rd Box 6017 Columbus, Ohio 43085
State of Ohio Respondent	Douglas C. Jones Assistant Attorney General

Department of Natural Resources
101 East Town Street
Columbus, Ohio 43215-5148

Natural Resources
101 East Town Street
Columbus, Ohio 43215

Beverly K. Crawford
Respondent
Pickaway County Treasurer
Pickaway Court House
Circleville, Ohio 43113

Jonathan L. Metzler
Assistant Prosecutor for
Pickaway County
Box 910
Circleville, Ohio 43113

Betty D. Montgomery
Ohio Attorney General
Respondent for the State of Ohio
State Office Tower
30 E. Broad Street
Columbus, Ohio 43215